

§ 655.33

§ 655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent

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of this part from taking any action otherwise consistent with law.

§§ 655.36–655.40 [Reserved]

Subpart E—Types of Testing

§ 655.41 Pre-employment drug testing.

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in § 655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§ 655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer